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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,563	10/15/2001	Kenneth Gerald Dextras		1451

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EXAMINER

GLESSNER, BRIAN E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 06/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/976,563

Applicant(s)

DEXTRAS, KENNETH GERALD

Examiner

Brian E. Glessner

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The following office action is in response to the response filed by applicant on January 22, 2003. Claims 1-5 are pending in the application. Claims 1-4 are rejected to and claim 5 is objected to as being an improper multiple dependent.

#### ***Claim Objections***

1. Claim 5 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot be dependent upon another multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits. The examiner mistakenly treated claim 5 in the previous office action. However, since claim 5 is an improper multiple dependent claim, it is not being treated in this office action.

#### ***Claim Rejections - 35 USC § 112***

1. Claims 1-4 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure that goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The scope of applicant's claims 1 and 2 is vague and indefinite due to the functional language. The applicant claims an improvement, but does not clearly distinguish what the improvement is or where it begins in the claims. Appropriate correction is required. Since the claims are vague and indefinite, the examiner will examine the claims as "best understood" until further correction and clarification is provided.

Art Unit: 3635

The applicant appears to be trying to write a Jepson type claim. In a Jepson claim, the preamble is supposed to set forth what is known in the art, or, in other words, what is prior art, i.e. a wall having studs with spaces formed between the studs, the studs being located between an upper perforated header and a lower perforated sill. The preamble in a Jepson claim may be used against the applicant. After the preamble discloses what is known in the prior art, the improvement is then listed and usually follows the phrase “wherein the improvement comprises”, i.e. “A wall having studs with spaces formed between the studs, the studs being located between an upper perforated header and a lower perforated sill, wherein the improvement comprises a humidity sensor located in the spaces between the studs”. If the applicant intends to claim a Jepson type claim, he should place the claim in the proper form, see MPEP 2129 [R-1].

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuno JP 361128047A in view of Tucker, Sr. (3,223,018).

In regard to claims 1 and 2, as “best understood”, Masuno discloses an improvement in a system to control moisture in an interior wall and an exterior load bearing wall construction, wherein the walls each have a cavity, the cavity 9 comprising moisture/humidity probes 13 installed in the wall such that if the moisture in the framing members or the humidity in the air in the cavity exceeds predetermined values the moisture humidity control mechanism actuates a fan

Art Unit: 3635

12 that circulates the air from within the cavity to the outside of the building by means of exhaust ports 11 connected to the exterior wall portion, the fan continues to operate until such time as the predetermined values are reached and upon reaching the limits, the mechanism shuts off the fan. The examiner would like to point out that the cavity in the exterior wall is connected to the cavity in the interior wall. Therefore, since the cavities are connected, the air from both cavities will be circulated. The examiner also contends that, since the cavities are connected, it would have been obvious to place sensors in both cavities to detect moisture in the different walls of the building because one wall may contain more moisture than another. Masuno does not specifically disclose that the wall contains studs or perforated upper and lower plates. Tucker teaches that it is known to provide ventilated walls that have studs 13 and perforated upper and lower plates 8, 14 to facilitate the ventilation of said walls. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate Tucker's studs and plates into Masuno's invention, because the perforated plates and studs will allow the fan to circulate the air through the walls, ceiling, and floor as well as the interior living space of the structure. Therefore, the humidity in the entire building structure will be controlled.

4. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuno JP 361128047A in view of Tucker, Sr. (3,223,018) and further in view of Goldsmith (5,988,264).

In regard to claims 3 and 4, as "best understood", Masuno in view of Tucker disclose the basic claimed invention except for specifically disclosing the use of insulation and insulation spacers in the cavity. Goldsmith teaches the use of ventilated walls having insulation 27 and insulation spacers 72. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the insulation and spacers into Masuno in view of

Art Unit: 3635

Tucker's invention, because the insulation and spacers will help to maintain the temperature within the interior of the building while still allowing the air to flow through the wall. Further, insulation in wall cavities is notoriously well known in the building construction art.

***Response to Arguments***

2. Applicant's arguments filed January 22, 2003 have been fully considered but they are not persuasive.

The applicant argues that the Masuno moisture system is designed to control moisture of an interior partition wall only, and that the partition is really a moisture sink used to control the moisture of the air in the interior living space. In regard to Masuno only controlling the moisture in an interior partition, the examiner respectfully disagrees because Masuno's partition wall cavity is connected to his load bearing wall cavity. This is so because the fan is mounted in the exterior load-bearing wall. Therefore, if the cavities were not connected, the fan would not circulate air from the living space through the cavity 9 and out of the exterior wall 2. Thus, since the two cavities are connected, the air in both cavities will be circulated and the moisture level will be controlled.

In regard to the "moisture sink" assumption, the examiner would like to say that the applicant is merely speculating that Masuno is only concerned about controlling the moisture of the living space. The applicant has not pointed out any reference in Masuno that states that he is only ventilating the living space and not the wall cavity. The examiner would like to point out the purpose of Masuno's invention, i.e. "To prevent dew condensation in a vent space formed in a partition". Masuno does not even mention the living space. He only mentions preventing moisture from forming in the cavity. Further, if Masuno was only concerned about the living

Art Unit: 3635

space, why would he just place the vent opening and fan directly through the exterior wall? If he did this, the air from the living space could be ventilated directly to the exterior of the building without have to go through the partition cavity. For this reason, the examiner contends that Masuno is concerned about ventilating the wall cavities along with the living space.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 703-305-0031.

The examiner can normally be reached on Monday-Friday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 703-308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

B.G.  
June 10, 2003

A handwritten signature in black ink, appearing to read "Brian E. Glessner", with a long horizontal flourish extending to the right.